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NO. 136

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

BADGER OIL COMPANY, Petitioner

vs.

GUY T. HELVERING
Commissioner of Internal Revenue

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

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MOTION FOR REHEARING TO RECONSIDER REFUSAL to GRANT WRIT of CERTIORARI AND FOR GRANTING OF WRIT OF CERTIORARI

WALTER G. RUSSELL,
ROSS M. LAMBDIN,
GEO. S. McCARTHY,
Counsel for Petitioner.

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TO THE HONORABLE, THE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Comes now the Badger Oil Company, having heretofore on to-wit the 7th day of November, 1941, been granted an extension of time to November 14, 1941, within which to file this motion, and presents its motion for a rehearing by this Honorable Court to reconsider its action of October 13, 1941, on which

date this Honorable Court denied the issuance of its writ of certiorari as prayed for by Petitioner.

In support of which motion Petitioner submits the following:

1. The general importance of the issue to the oil industry is reflected by the fact that at the present term of the Supreme Court several cases were presented involving similar fact situations and involving the determination of whether taxpayer, as in Petitioner's case, was entitled to deduct percentage depletion on cash sums received for the transfer of oil property as for bonus or advance royalty payments. Attention is called to Roeser & Pendleton, Inc. vs. Commissioner, writ of certiorari denied October 13, the same day petitioner's writ was denied, in which a taxpayer was asserting a similar application of the law relating to allowance of depletion; Marrs McLean, denied by this Honorable Court on October 20, where taxpayer was asserting he was not entitled to depletion, but had made an outright sale reserving no economic interest, and the Commissioner was taking the position that the case was a "Palmer vs. Bender" case and Petitioner was entitled to deplete the cash bonus received for the sale of oil properties, while in the Badger, or instant case, the Petitioner was maintaining its right to deplete a cash sum so received and the Commissioner was denying the right, and writ of certiorari was denied in both cases. We are also informed of the case of Rialto Mining Corporation vs. Commissioner, an Oklahoma case, on a similar issue, the Commissioner being appellant, but withholding appeal until final determination of the Badger Oil Company case. All of which references are submitted as indicating the general importance of the question involved and the uncertainty evidently existing as to proper application of the law to the facts.

In this respect Petitioner is informed and believes that the taxpayers in the Roeser, Inc., case and the Marrs McLean case, both decided at this term of court and which involve conflicting interpretations of the same or similar issues, are filing motions for rehearing to reconsider refusal of the court to grant the writ of certiorari, and in part are basing their respective motions on the importance of the question as exemplified by the cases which have arisen and will unquestionably arise in the industry until the question is set at rest by the decision of this Honorable Court on its merits.

2. The matter at issue is one involving an industry of great importance and which should have for its encouragement in producing the present large requirements and anticipated increased demands a settled policy of the law to guide its future investments and operations.

3. The denial of review in cases involving apparently conflicting decisions on the same or similar issues leaves no precedent to guide the taxpayer nor the Treasury Department, not being a determination of the issue which can serve as a precedent.

4. Numerous cases, as demonstrated, have already arisen involving the issue, and it will become increasingly important that there be a settled decision by the highest tribunal to guide large operators who will in the future take over the operations of smaller owners in order to develop petroleum products more abundantly and relieve threatened or existing shortages.

WHEREFORE, because of the importance of the issue involved to the oil industry as a whole and the necessity for settled decisions of this highest court to

guide taxpayer and Government, the Petitioner respectfully urges that this Honorable Court reconsider its determination heretofore reached herein refusing the grant of certiorari, and that upon a reconsideration of the cases and of the briefs and petitions whose contents fully set out the position of the litigants, that the writ of certiorari be granted to the end that the law may be settled and the case heard on its merits.

Respectfully submitted,

WALTER G. RUSSELL,
ROSS M. LAMBDIN,
GEO. S. McCARTHY,
Counsel for Petitioner.

I,_____counsel for appellant above named, herewith certify that the foregoing petition for a rehearing is presented in good faith and not for delay.

_____
Counsel for Appellant.